Supreme Court, U.S.
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No. 02-447 (2)

In the Supreme Court of the United States

Dale "J.R." Heidbreder,

Petitioner,

v.

Kathleen Jean Carton, aka Katie Carton, aka Kate Carton,

Respondents,

and

M.J.P. and M.B.P.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

BRIEF IN OPPOSTITION TO PETITION FOR A WRIT OF CERTIORARI

Wright S. Walling
Counsel of Record
WALLING & BERG, P.A.
121 South Eighth Street
Suite 1100
Minneapolis, MN 55402
(612) 340-1150
Counsel for Respondents

2002 – Bachman Legal Printing ■ (612) 339-9518 ■ 1-800-715-3582 ■ Fax (612) 337-8053

HIPP

QUESTIONS PRESENTED

I. Whether the Minnesota Supreme Court correctly held, pursuant to established precedent of this Court, in interpreting Minnesota statutes which define the conduct that a putative father must engage in order to demonstrate, or assert, an interest in a child placed for adoption; that the Minnesota statutes did not violate Petitioner's right to procedural due process, where the Minnesota statutes adequately protected Appellant's opportunity to develop or establish a relationship with K.M.C.

II. Whether the Minnesota Supreme Court correctly held, pursuant to established precedent of this Court, in interpreting Minnesota statutes which define the conduct that a putative father must engage in order to demonstrate, or assert, an interest in a child placed for adoption; that the Minnesota statutes did not violate Petitioner's right to equal protection, where the Minnesota statutes distinguished between Petitioner, who had no established relationship with K.M.C. and had taken no steps to establish such a relationship, and Respondent Carton, who had an established custodial relationship with the child.

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CONSTITUTIONAL PROVISIONS AND STATUTES

Relevant Minnesota statutes presented in this case are Minn. Stat. §259.49 and Minn. Stat. §259.52. Due to length, these statutes are presented in full in the Appendix pursuant to Supreme Court Rule 14.1(f).[1]

COUNTER-STATEMENT OF THE CASE

Petitioner brought a paternity action in Stearns County District Court on October 23, 2000, against Respondent/Defendant Katie Carton ("Carton"), seeking an adjudication of the paternity of K.M.C., who was born to Carton on August 12, 2000, in Minnesota, and further seeking to stop the adoption of K.M.C. by Respondent/Intervenors M.J.P. and M.B.P. Respondent/Intervenors M.J.P. and M.B.P., the adoptive parents of the child K.M.C., intervened pursuant to stipulation and brought a motion to dismiss, with prejudice, the action brought by Petitioner. On March 5, 2001, the Honorable Judge Richard Jessen, Stearns County District Court, granted Respondent/Intervenors' motion for summary judgment, and dismissed the paternity action brought by Petitioner. Petitioner appealed this decision to the Minnesota Court of Appeals, which affirmed the decision of the trial court in an unanimous decision issued on December 11, 2001. Petitioner appealed this decision to the Minnesota Supreme Court, which affirmed the decision of the Court of Appeals in an opinion issued on June 13, 2002.

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[1] Petitioner has, in his provision of portions of these statutes in the Petition For A Writ of Certiorari, emphasized or "bolded" portions of the statute, without including any acknowledgement of that fact, thereby providing the misleading appearance that the Minnesota Legislature chose to emphasize portions of the statute. Petitioner's citation and representation of these statutes is incorrect, and Respondents respectfully refer the Court to the full and correct text of the statutes.

A. History Of The Case

In 1999, Petitioner and Carton became involved in a relationship. Carton became pregnant, and notified Petitioner during the first month of her pregnancy. Very early on in the pregnancy, Carton brought up to Petitioner the possibility of placing the child for adoption, and Petitioner indicated he would not support an adoption. During her pregnancy, Carton continued to live primarily with her mother and her siblings, in her family home. Additionally, during her pregnancy, Carton moved to Carthage, Illinois for a period of a couple of weeks, where she lived with family friends, and during this time she did not inform Petitioner where she was.

During Carton's seventh month of pregnancy, Carton and Petitioner moved into an apartment. Carton paid both the security deposit and rent, Petitioner provided no financial support to Carton.[2] Carton lived at that apartment for a period of approximately three (3) weeks.[3] Around this time, Petitioner was aware that Carton's mother and siblings were moving to Minnesota, and that Carton was upset by this fact. After approximately three weeks, in the middle of June 2000

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[2] Petitioner asserts that he "assumed financial responsibility" for the apartment, implying that he provided financial support to Carton during the pregnancy. This statement and Petitioner's assertions in this regard are absolutely incorrect and have no support in the record. Petitioner testified that Carton paid the security deposit and rent on the apartment during the time period in which Carton lived there, and that he provided no financial support to Carton.

[3] Petitioner asserts in the Petition For A Writ of Certiorari that he and Carton moved in together after they learned of the pregnancy, and that they lived together throughout her pregnancy. This assertion is incorrect and has absolutely no support in the record. Petitioner's own testimony stated that they lived together for only a few weeks during the end of May/early June of 2000 during Carton's seventh month of pregnancy. Petitioner's own testimony stated that Carton lived with her mother during the pregnancy, and also that she had gone to Illinois for a time during the pregnancy, during which time he did not know where she was.

Carton moved to Minnesota.[4] Carton did not tell Petitioner where she had gone. Carton first stayed with her grandparents in Minnesota, and then moved to a group home for pregnant teens. At approximately that same timeframe of June 2000, Carton's mother, and siblings, moved to Minnesota as well.

After moving to Minnesota, Carton refused to tell Petitioner where she had gone. When Petitioner asked her, via email, Carton refused to disclose her location. Petitioner testified he believed she had perhaps gone to Illinois. Petitioner asked a few of Carton's friends or family to tell him Carton's location, and they refused as well.[5] Petitioner allegedly consulted an attorney in Iowa, and then did not take any action whatsoever to assert or establish any interest in Carton's child. Despite being on notice that Carton was likely in either Minnesota, Illinois, or Iowa, and despite his own testimony that he believed Carton had probably gone to Illinois, Petitioner did not file or initiate any paternity action, in any state. Petitioner did not register on any paternity or father's registry, despite the fact that such registries are available in Iowa, Illinois and Minnesota. Petitioner did not hire any investigators to attempt to determine Carton's exact location. Petitioner did not begin paying support for the child into any kind of fund or account. By his own admission, for months Petitioner simply waited for Carton to "send [him] papers." Heidbreder v. Carton, 645 N.W.2d 355, 361 (Minn. 2002).

After moving to the home for pregnant teens in Minnesota, Carton decided to place her child for adoption,

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[4] Petitioner asserts that Minnesota allegedly "terminates the rights of the highest percentage of parents in the country." Petition For A Writ of Certiorari, p. 13, n. 9. This statement has no basis in the record, no supporting authority whatsoever, and is irrelevant.

[5] Petitioner asserts that Carton's family and friends lied to him; this statement is not true and is not supported by the record.

and consulted with a licensed adoption agency in Minnesota. The agency advised Carton of the law in Minnesota, that Carton was not required to place any putative father's name upon the child's birth certificate, and further advised her that the child could be adopted if no putative father had registered upon the Minnesota Father's Adoption Registry ("MFAR") within 30 days of the child's birth, see Minn. Stat. §259.52 (provisions of Minnesota Father's Adoption Registry). Carton selected the proposed adoptive parents, Intervenors/Respondents M.B.P. and M.J.P., and two days after the child's birth on August 12, 2000, K.M.C. was discharged from the hospital to their care. K.M.C. has remained with her family since that date, now more than two and one-half years.

On September 12, 2000, 31 days after K.M.C. was born, Petitioner ran into a woman at a gas station who said that Carton had placed her child for adoption in Minnesota. Petitioner then searched the Internet regarding "fathers rights" and in a matter of minutes Petitioner found information on the Minnesota Father's Adoption Registry. He printed out, completed and mailed the registration forms, which were postmarked on the 31st day after the child's birth. Later that evening Petitioner spoke with Carton, who confirmed she had placed the child for adoption in Minnesota.

Subsequently, Petitioner filed a paternity action in Stearns County, Minnesota (where Carton resides) seeking to be adjudicated as the father of K.M.C. and seeking to stop her adoption. Respondents/Intervenors M.J.P. and M.B.P. intervened pursuant to a stipulation between the parties, and brought a motion to dismiss, with prejudice, Petitioner's action. The trial court granted Respondents/Intervenors summary judgment and dismissed Petitioner's paternity action. Petitioner then appealed this decision to the Court of Appeals, which affirmed the trial court's decision in a unanimous published decision issued on December 11, 2001. Petitioner petitioned the Minnesota Supreme Court to grant

certiorari, certiorari was granted and the Minnesota Supreme Court affirmed the decisions of the Court of Appeals and the trial court in a decision issued on June 13, 2002.[6]

The decision of the Minnesota Supreme Court held that (1) Carton's failure to reveal her location did not excuse Petitioner's failure to register upon the MFAR within 30 days of the child's birth, where the language of the statute provided that Petitioner's lack of knowledge regarding the pregnancy or birth was not an excuse; (2) that Carton's failure to disclose her location to Petitioner did not constitute "fraudulent concealment" because Carton owed no fiduciary duty to provide information to Petitioner; (3) Petitioner could not maintain his paternity action based upon a theory that he had "substantially complied" with the statute; (4) the time limit of 30 days after the child's birth contained in Minn. Stat. §259.52 is not a "statute of limitations" that could be tolled by any fraudulent concealment, even if such fraudulent concealment had actually occurred; (5) the doctrines of equitable estoppel and "unclean hands" did not apply to support Petitioner's claims; and (6) Minnesota's statutory scheme concerning what notice of an adoption must be given to putative fathers did not violate either Petitioner's rights to procedural due process or equal protection. Heidbreder, 645 N.W.2d 355.

The decision of the Minnesota Supreme Court was in conformity with the decisions of other state courts which have addressed the level of protection which must be afforded to putative fathers. See, e.g., In Re Petition of K.J.R. and D.F.R. to Adopt O.J.M., a/k/a O.J.K., 687 N.E.2d 113, 117 (Ill. Ct. App. 1997); In Re Paternity of Baby Doe, 734 N.E.2d 281

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[6] Petitioner's blatant mischaracterization of the holding of the Minnesota Supreme Court demands a close reading of the Minnesota Supreme Court's opinion. In particular, contrary to Petitioner's assertions, the Court specifically held that as a matter of law, that there had been no "fraud" and no "fraudulent concealment."

(Ind. Ct. App. 2000); Robert O. v. Russell K., 604 N.E.2d 99 (N.Y. 1992); In Re Adoption of Baby Girl Hudnall, 594 N.E.2d 45 (Ohio Ct. App. 1991); In Re Adoption of Baby Boy Dearing, 648 N.E.2d 57 (Ohio Ct. App. 1994); In Re Raquel Marie X, 559 N.E.2d 418 (N.Y. 1990); Ellis v. Social Servs. Dept. of the Church of Jesus Christ of Latter-Day Saints, 615 P.2d 1250 (Utah 1980); In Re Adoption of Baby Boy Doe, 717 P.2d 686 (Utah 1986).

B. Relevant Statutes

Under Minnesota law, consent to adoption is not required of a parent who is not entitled to notice of the adoption proceedings. Minn. Stat. §259.24, subd. 1(a). Pursuant to Minn. Stat. §259.49, subd. 1(b), notice of an adoption (and therefore, consent of that parent) is required for seven categories of parents: those parents who appear on the child's birth certificate; who substantially support the child; who are married to the child's mother within 325 days prior to the child's birth or within ten days after the child's birth; who is openly living with the child or mother; who has been adjudicated as the child's parent; who files a paternity action within 30 days after the child's birth and the action is still pending; or who signs a recognition of parentage pursuant to Minn. Stat. §257.75. Minn. Stat. §259.49, subd. 1(b)(1)-(7).

For those parents who do not meet any of the above categories, Minnesota law provides a further opportunity to qualify for notice of an adoption, and therefore to gain the status of a parent whose consent is required in order for the child to be adopted, known as the Minnesota Father's Adoption Registry, or "MFAR." The provisions of the MFAR are principally contained in Minn. Stat. §259.52, and are referenced in detail as well in the general notice provisions contained in Minn. Stat. §259.49. Pursuant to Minn. Stat. §259.49, subd. 1(b)(8) and Minn. Stat. §259.52, a putative father may, at any time after a child's conception, register upon the Minnesota Father's Adoption Registry.

Minn. Stat. §259.52, subd. 7.[7] A putative father must, however, register within 30 days of a child's birth. Minn. Stat. §259.52, subd. 7. A putative father who fails to register within 30 days of the child' s birth, is barred thereafter from bringing or maintaining an action to assert any interest in the child during pending adoption proceedings concerning the child; is considered to have waived and surrendered any right to notice of any hearing in any judicial proceedings for adoption of the child; consent of the person to the child's adoption is not required, and is considered to have abandoned the child. Minn. Stat. §259.52, subd. 8.

A putative father who fails to register within the required 30-day period, has yet another remaining option under the statute. Specifically, a putative father may be considered to have timely registered, if he proves, by clear and convincing evidence, that it was "not possible" for him to register within 30 days of the child's birth; his failure to register "was through no fault of his own;" and he registered within ten days after it became possible for him to do so. Minn. Stat. §259.52, subd. 8. Finally, the Minnesota Legislature specifically provided, that a "lack of knowledge

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[7] Petitioner's assertion that Minn. Stat. §259.52 narrowed the time frame in which a putative father could assert an interest in a child, from prior Minnesota law, is also incorrect. Previous law provided that a putative father was able to assert an interest in a child by filing an affidavit with the Department of Health within 60 days of the child's placement with prospective adoptive parents or within 90 days of the child's birth. No registration could occur before birth. Minn. Stat. §259.51 (repealed Minn. Laws 1997, c. 218, §13). This statute was replaced with Minn. Stat. §259.52, which allows a putative father to assert an interest in a child by registering upon the Registry at any time from before birth up until 30 days after the child's birth – accordingly, giving putative fathers a total of ten months (nine months of pregnancy plus 30 days after birth) in which to assert their interest in a child. Minn. Stat. §259.52, subd. 7. Accordingly, contrary to Petitioner's assertions Minn. Stat. §259.52 actually represents a significant expansion in the rights of putative fathers from previous Minnesota law.

of the pregnancy or birth is not an acceptable reason for failure to register." Minn. Stat. §259.52, subd. 8.

SUMMARY OF THE ARGUMENT

The Minnesota Supreme Court, in reviewing the grant of summary judgment to Intervenors/Respondents M.J.P. and M.B.P., correctly stated and applied the standard of review applicable to a grant of summary judgment. The Court reviewed the facts in the light most favorable to Petitioner; yet still concluded that Petitioner did not demonstrate a genuine issue of material fact for trial that Petitioner could meet his burden to prove by clear and convincing evidence as required by the statute, that the statutory exception would apply to excuse his untimely registration upon the MFAR.

The Minnesota Supreme Court correctly determined that, in accordance with this Court's holding in Lehr v. Robertson, 463 U.S. 248 (1983) and related cases, Minnesota's statutory scheme relative to putative fathers, principally contained in Minn. Stat. §§259.49 and 259.52, did not violate Petitioner's right to procedural due process; as the statutes adequately protected Petitioner's inchoate interest, or opportunity to form or assert a relationship with the child which would then rise to a level which would receive more substantial protection.

The Minnesota Supreme Court correctly determined that, in accordance with this Court's holding in Lehr v. Robertson, 463 U.S. 248 (1983) and related cases, Minnesota's statutory scheme relative to putative fathers, principally contained in Minn. Stat. §§259.49 and 259.52, did not violate Petitioner's right to equal protection, where the statutes made a distinction between unwed mothers and putative fathers based upon the level of relationship established with the child.

REASONS FOR DENYING THE PETITION

Respondent/Intervenors respectfully request that this Court deny the Petition For A Writ of Certiorari filed by Petitioner Dale Heidbreder, seeking review of the decision of the Supreme Court of the State of Minnesota, entered on June 13, 2001.

I. THE CASE INVOLVES CONSTITUTIONAL RIGHTS WHICH HAVE ALREADY BEEN CLEARLY ESTABLISHED AND SET FORTH IN APPLICABLE UNITED STATES SUPREME COURT PRECEDENT, AND THEREFORE DOES NOT PRESENT ANY NEW OR NOVEL ISSUE FOR REVIEW BY THIS COURT.

Petitioner argues that this Court should accept review of his claims, arguing that this case presents an "important" matter because it involves the legal relationships between a child and her adoptive parents, her biological mother, and a putative father. While there is no doubt that a person's rights with regard to a child are recognized by this Court, and by society, as of the utmost importance, this case does not present any new or novel issues or claims. Rather, this case concerns what Constitutional rights may be claimed by a putative father in regards to the child born to an unwed mother. This Court has already clearly set forth the minimum standards which must exist in a State's statutes in order for those statutes to pass constitutional muster in regards to the rights of a putative father, see, e.g., Lehr v. Robertson, 463 U.S. 248 (1983); Caban v. Mohammed, 441 U.S. 380 (1979), and the Minnesota statutes at issue in this case provided even greater protection than that which is required by this Court's precedent.

Accordingly, while this case undoubtedly involves significant societal and human relationships, the legal protections accorded those relationships have been well

established by this Court, the Minnesota Supreme Court correctly held that those legal protections are more than adequately provided by the Minnesota statutes at issue, and there are no important or novel questions to be addressed by this Court in this case.

The Minnesota statutes contained in Minn. Stat. §§ 259.49 and 259.52, represent a comprehensive system to provide notice, and substantive rights, to those putative fathers who have taken the responsibility to assert, and demonstrate, some interest in a child. These statutes, while providing a mechanism for identifying putative fathers and giving them notice of adoption proceedings, balance the putative father's interests with those of the child, the birth mother, and the adoptive parents, and also "serve the interests of the child and adoptive parents by establishing a clear cut-off date after which there is little risk that a putative father who failed to timely register and is not otherwise entitled to notice can disrupt the adoptive placement." Heidbreder, 645 N.W.2d at 369.

The Minnesota Supreme Court held that in enacting Minn. Stat. §259.52, the legislature "decided that a putative father must act promptly to assert" an interest in a child, and that at some point a "putative father's interest in knowing and raising his child gives way to the child's interest in having a permanent and stable home." Id. at 370. As this Court is bound by the construction given to the statutes by the Minnesota court, R.A.V. v. City of St. Paul, 505 U.S. 377, 381 (1992), the determinations by the Minnesota Supreme Court of the purpose, effect, and policy behind the Minnesota statutes relative to adoption, are as set forth in Heidbreder v. Carton, 645 N.W.2d 355.

II. THE MINNESOTA SUPREME COURT CORRECTLY APPLIED THE LAW, IN REVIEWING THE FACTS IN THE LIGHT MOST FAVORABLE TO PETITIONER, AND ACCORDINGLY THERE HAS BEEN NO ERROR WHICH WOULD REQUIRE CORRECTION BY THIS COURT.

Petitioner argues that the trial court misapplied the law, by claiming the Minnesota Supreme Court failed to view the facts in the light most favorable to Petitioner upon his appeal of the grant of summary judgment to Respondents. Under Minnesota law, summary judgment is appropriate when the "evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact" for trial, and the moving party "is entitled to judgment as a matter of law." Funchess v. Cecil Newman Corp., 632 N.W.2d 666, 672 (Minn. 2001).

Petitioner argues that the Minnesota courts erred and failed to view the facts in the light most favorable to his case. However, in reality, the courts did view the facts in the light most favorable to Petitioner. The courts' application of the correct standard, in viewing the facts in the light most favorable to Petitioner, is seen throughout the Minnesota Supreme Court opinion, and will not be repeated unnecessarily herein. However, significant instances of the Minnesota Supreme Court viewing the facts in the light most favorable to Petitioner are noted as follows: the Minnesota court assumed that Carton did, in fact, make a promise to Petitioner during their discussion of adoption early in Carton's pregnancy; the Minnesota court took as true Petitioner's assertions that he occasionally paid for meals for Carton; that Carton's relationship with her mother was strained, that Carton had told Petitioner she would not move to Minnesota with her mother; despite Carton's testimony that she left Petitioner because they argued, the court took as true Petitioner's assertion that he did not know why Carton left but

that she was "scared and confused;" the court took as true Petitioner's assertions that Carton's family and friends refused to tell him Carton's location when he asked; that he never considered the possibility that Carton was in Minnesota due to Carton's relationship with her mother; and that an Iowa attorney told him that K.M.C. could not be adopted in Iowa without his consent. Heidbreder, 645 N.W.2d at 360-61.

All facts, and inferences, were taken and viewed in the light most favorable to Petitioner by the Minnesota court. This is clear from a reading of the Minnesota Supreme Court's decision. Ultimately, however, what Petitioner doesn't understand, is the distinction that, even when all the facts and inferences were taken or viewed in the light most favorable to Petitioner, the conclusion was still that Petitioner did not meet his burden. Specifically, to avoid summary judgment, Petitioner was required to demonstrate a genuine issue of material fact as to whether he could prove, under the "clear and convincing evidence" standard required by the applicable statutes, that it was "not possible" for him to register within 30 days of K.M.C.'s birth as required by Minn. Stat. §259.52. The Minnesota Supreme Court's conclusion, that even when the facts were viewed in the light most favorable to Petitioner, Petitioner had not met that burden, results from a proper application of the law to this case.

Petitioner simply does not understand that the conclusion of the court can still be against him, even when the facts are viewed in the light most favorable to his claims. Ultimately, Petitioner seeks to have this Court re-examine the facts, and reverse the decision of the Minnesota Supreme Court to find in his favor. As this Court has long stated, the Supreme Court does "not grant a certiorari to review evidence and discuss particular facts," United States v. Johnson, 268 U.S. 220, 227 (1925), for "certiorari jurisdiction is designed to serve purposes broader than the correction of error in particular cases." Watt v. Alaska, 451 U.S. 259, 275, n.5 (1981) (Stevens, J., concurring). There is simply no

compelling reason for this Court to grant review to accommodate Petitioner's belief that the conclusion must also be in his favor when the facts are viewed in his favor.

III. THE HOLDING OF THE MINNESOTA SUPREME COURT, THAT THE MINNESOTA STATUTES DID NOT VIOLATE ANY PROCEDURAL DUE PROCESS RIGHT HELD BY PETITIONER, IS NOT IN CONFLICT WITH ANY DECISIONS OF THIS COURT AND DOES NOT PRESENT ANY ISSUE FOR REVIEW BY THIS COURT.

Petitioner argues that the Minnesota Supreme Court decided his case in a manner that conflicts with precedent of this Court. This Court has already clearly set forth the levels of procedural due process protection which inure to unwed fathers in relation to potential biological children. Pursuant to these rulings, the Minnesota Supreme Court correctly held that the Minnesota statutes at issue more than adequately provided the required level of procedural due process protection. Petitioner's argument is based upon both a misunderstanding of the case law, and a misunderstanding of Petitioner's constitutional rights, and further is, in reality, based upon Petitioner's attempt to obtain United States Supreme Court review of the Minnesota court's holdings regarding the facts of the case.

Petitioner claims a liberty interest, subject to due process protection, by virtue of his relationship as a potential biological father of K.M.C. Petitioner claims that the decision of the Minnesota Supreme Court, violated this Constitutional right. However, as this Court has clearly stated, the actual relationship between an unwed parent, and a child, is critical in determining the level of protection afforded by the due process clause. Lehr, 463 U.S. at 261. Where an "unwed father demonstrates a full commitment to the responsibilities of parenthood by 'com[ing] forward to

participate in the rearing of his child,'" then his interest in the child acquires "substantial protection under the due process clause." Lehr, 463 U.S. at 261 (citing Caban, 441 U.S. at 392). However, the "mere existence of a biological link does not merit equivalent constitutional protection." Id. (emphasis added). Rather, the

> significance of the biological connection is that it offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring. If he grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development. If he fails to do so, the Federal Constitution will not automatically compel a state to listen to his opinion of where the child's best interests lie.

Lehr, 463 U.S. at 262. As the Lehr Court quoted, "[p]arental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring." Lehr, 463 U.S. at 260.

Accordingly, where a court is not asked to assess the adequacy of a state's procedure for terminating a developed relationship with a child, the question then is whether the State adequately protected a putative father's opportunity to form such a developed or established relationship which would have acquired substantial due process protection. Lehr, 463 U.S. at 262-63. As this Court has noted, if a State's statutory scheme were "likely to omit many responsible fathers, and if qualification for notice were beyond the control of an interested putative father," then the State's statutory scheme "might be thought procedurally inadequate." Lehr, 463 U.S. at 264.

Petitioner claims that the facts of his case show that he demonstrated the required "commitment" under Lehr and Caban, such that he therefore is entitled to the full level of substantial due process protection. Petitioner claims on this basis that it was error for the Minnesota courts to apply to him, the holding of Lehr relative to putative fathers who have not demonstrated the required level of "commitment" to acquire more substantial due process protection.

However, it is clear that to the contrary, the Minnesota Supreme Court correctly held that Petitioner never established a custodial, personal or financial relationship with K.M.C. which would have entitled Petitioner to more substantial due process protection under Lehr. Even viewing the facts in the light most favorable to Petitioner, as required in reviewing a grant of summary judgment, it is clear that Petitioner did not establish a relationship with K.M.C. which was entitled to more significant due process protection. Petitioner never had a custodial right to K.M.C., and never even asserted any interest in custody of K.M.C. until months after her birth and after he learned K.M.C. had been placed for adoption. There is no evidence in the record that would support any conclusion that Petitioner had a personal relationship with K.M.C., and Petitioner never provided any financial support to Carton during her pregnancy, and never even attempted to provide support to K.M.C. upon her birth, such as by placing funds for K.M.C. in a separate account or otherwise indicating any attempt whatsoever to support K.M.C.[8] Heidbreder, 645 N.W.2d at 372-73. Furthermore, Petitioner never engaged in any efforts to establish any legal relationship with the child, as he failed to file a paternity action or register upon a paternity registry in any state; Petitioner acted only after learning K.M.C. had been placed for adoption.

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[8] Again, Petitioner's assertions that he provided financial or other support to Carton are misrepresentations, and are unsupported by the record.

Petitioner further argues that Minnesota Supreme Court erred in holding he had not 'grasped the opportunity' to establish a protected relationship, based principally upon his claims that it was not "reasonable" to expect him to investigate his options under Minnesota law when he lived in Iowa all his life. However, as described above, the Minnesota court correctly viewed the facts in the light most favorable to Petitioner. Even taking all Petitioner's assertions as true, the Minnesota court still reached the conclusion that Petitioner had notice of at least the possibility that Carton was in Minnesota. Furthermore, as the Minnesota Supreme Court held, Petitioner could have filed a paternity action in any state, which would have protected his interest under Minn. Stat. §259.49, and further would at least support a claim that he had demonstrated the required level of commitment and attempt to grasp the opportunity to become a legal parent to K.M.C. Heidbreder, 645 N.W.2d at 375. Even viewing the facts in the light most favorable to Petitioner, the Minnesota Supreme Court's conclusion, that Petitioner did not establish a relationship with K.M.C. which would entitle him to substantial due process protection under Lehr, is correct.

Accordingly, as Petitioner did not have an established relationship with K.M.C., as the Minnesota Supreme Court correctly noted, Heidbreder, 645 N.W.2d at 374, n.13, then the issue under Lehr is whether the entire Minnesota statutory scheme relative to putative fathers and adoption adequately protected Petitioner's inchoate interest - his opportunity to form such a protected relationship which would become entitled to more substantial due process protection. In reviewing this issue, this Court is bound by the construction given to the statutes by the Minnesota court. R.A.V., 505 U.S. at 381.

Minnesota's statutory scheme contained at Minn. Stat. §§259.49 and 259.52, provides eight (8) categories of putative fathers with the right to notice of an adoption. Those categories provide notice to those putative fathers who have

taken some action which demonstrates, to the world at large, an interest in the child – such as putative fathers who are living with the child or mother, supported the child, or initiated a paternity action within 30 days of the child's birth. See Minn. Stat. §259.49, subd. 1(b)(1)-(7). Further, the statutes provide opportunities for a putative father to assert an interest in a child and become entitled to notice of an adoption, absolutely independently of any actions by the biological mother. See Minn. Stat. §259.49, subd.1(b)(6) (putative father who files a paternity action within 30 days of child's birth); Minn. Stat. §259.52 (providing Minnesota Father's Adoption Registry).

As the statutes at issue represent protection of categories of putative fathers, which categories are similar to those upheld in Lehr, the statutes pass constitutional muster under Lehr. Petitioner attempts to distinguish Lehr, and accordingly tries to claim that he presents a 'new' issue, by arguing that the statutes are unconstitutional as applied to him by virtue of the fact that he was an Iowa resident. Significantly, however, a putative father who initiated a paternity action in any state within 30 days of the child's birth, would have protected his interest in the child, and become entitled to notice of an adoption under the Minnesota statutes. Heidbreder, 645 N.W.2d at 375. Furthermore, pursuant to Minn. Stat. §259.52 and Minn. Stat. §259.49, subd. 1(b)(8), a putative father who registers upon the MFAR within 30 days of the child's birth, and takes the required steps after registration, acquires the right to notice of a child's adoption completely independently, irregardless of a biological mother's wishes.

As the Minnesota Supreme Court held, the statutory scheme at issue in this case, as represented by Minn. Stat. §§259.49 and 259.52, is not "likely to omit many responsible fathers", even those who live outside of Minnesota, and, further, "qualification for notice [is] not beyond the control of an interested putative father" living outside the state of

Minnesota. Heidbreder, 645 N.W.2d at 375 (quoting Lehr, 463 U.S. at 264). Minnesota's statutory scheme – which is virtually identical to the statutes upheld by this Court in Lehr – adequately protected Petitioner's inchoate interest, his "opportunity" to form a relationship with K.M.C. which would have entitled him to more substantial due process protection. There is no conflict with this Court's decision in Lehr and related cases, rather Petitioner simply failed to avail himself of any of opportunities available to him, and now complains of the results of his own inaction. This complaint does not present a significant constitutional question for this Court.

IV. THE DECISION BY THE MINNESOTA SUPREME COURT, THAT THE MINNESOTA STATUTES DID NOT VIOLATE ANY RIGHT TO EQUAL PROTECTION HELD BY PETITIONER, IS NOT IN CONFLICT WITH ANY DECISION OF THIS COURT AND DOES NOT PRESENT ANY ISSUE FOR REVIEW BY THIS COURT.

Petitioner claims that Minnesota's statutes, by requiring Carton's consent to an adoption of her child K.M.C. but not requiring that notice be given to Petitioner as a putative father, violates Petitioner's rights to Equal Protection. Petitioner's claim is without merit, and the Minnesota Supreme Court correctly concluded that equal protection did not require that Petitioner, a putative father, be given the same legal rights with regard to K.M.C.'s adoption as K.M.C.'s biological mother.

It is well-established that, where one parent "has an established custodial relationship" with a child, and where the other parent "has either abandoned or never established a relationship, the Equal Protection Clause does not prevent a state from according the two parents different legal rights." Lehr, 463 U.S. at 268. In this case, as the biological mother,

Carton had an established custodial (and legal) relationship with the child K.M.C. In contrast, Petitioner did not have any established relationship with K.M.C., and he failed to avail himself of the various opportunities available to him to establish such a protected relationship.

As the Minnesota Supreme Court found, Petitioner had opportunities to establish a sufficient commitment to the child, such that he would have been entitled to constitutional protection, even if he did not meet the technical requirements of registering upon the MFAR within the one portion of the statutes. Petitioner could have commenced a paternity action in any of the three states in which he had notice Carton might be located – Iowa, Illinois, or Minnesota. This would have protected his rights under Minnesota law, and would further have demonstrated a relationship with, or interest in, the child which would at least have supported his claim that he possessed an interest entitled to equal protection. Petitioner could have registered with the registries which were available in Minnesota, in Illinois and in Iowa. Again, such an action would at least have demonstrated that Petitioner attempted to establish a relationship or assert an interest in the child, which would have at least supported his claim that he possessed an interest entitled to equal protection. Where Petitioner failed to take any steps, which would have established any legally cognizable interest or relationship in regards to K.M.C., he failed to establish any "relationship" with K.M.C. which would have entitled him to constitutional protections on the level accorded to K.M.C.'s biological mother.

Where Petitioner failed to take any steps to establish a relationship with K.M.C. – instead by his own admission he simply waited for someone to send him papers – the Minnesota Supreme Court correctly held that it did not violate equal protection to treat Carton, who had an established relationship with the child, differently from Petitioner, a putative father who took no steps to establish any relationship or assert any interest in the child. This conclusion was not in

conflict with any precedent of this Court – in fact, this conclusion is squarely within the holdings of relevant decisions, including both Lehr and Caban, as Petitioner failed to establish or demonstrate any "commitment" or sufficient relationship which would grant him any significant level of constitutional protection.

CONCLUSION

For these reasons, the Petition For A Writ of Certiorari should be denied.

Respectfully submitted,

Wright S. Walling
Counsel of Record
WALLING & BERG, P.A.
121 South Eighth Street
Suite 1100
Minneapolis, MN 55402
Tel: (612) 340-1150
Fax: (612) 340-1154

APPENDIX INDEX

1. Minn. Stat. § 259.49..... RA-1

2. Minn. Stat. § 259.52..... RA-3

259.49. Notice, Hearing on Petition

Subdivision 1. To whom given. Except as provided in subdivision 3 and subject to section 259.52, notice of the hearing upon a petition to adopt a child must be given to:

(a) the guardian, if any, of a child;

(b) the parent of a child if:

(1) the person's name appears on the child's birth record, as a parent;

(2) the person has substantially supported the child;

(3) the person either was married to the person designated on the birth record as the natural mother within the 325 days before the child's birth or married that person within the ten days after the child's birth;

(4) the person is openly living with the child or the person designated on the birth record as the natural mother of the child, or both;

(5) the person has been adjudicated the child's parent;

(6) the person has filed a paternity action within 30 days after the child's birth and the action is still pending;

(7) the person and the mother of the child have signed a declaration of parentage under section 257.34 before August 1, 1995, which has not been revoked or a recognition of parentage under section 257.75, which has not been revoked or vacated; or

(8) the person:

(i) is not entitled to notice under clauses (1) to (7);

(ii) has registered with the fathers' adoption registry;

(iii) after receiving a fathers' adoption registry notice, has timely filed an intent to retain parental rights with entry of appearance form under section 259.52; and

(iv) within 30 days of receipt of the fathers' adoption registry notice has initiated a paternity action, unless, for good cause shown, he is unable to do so within the 30 days; a paternity action must be initiated by the putative father in district court; application to the public authority for paternity establishment services does not constitute initiation of an action; and

(c) the child's tribe pursuant to section 260.761, subdivision 3, if the child is an Indian child.

Notice under this section need not be given to a person listed in this subdivision whose parental rights have been terminated. The notice of the hearing may be waived by a parent, guardian, or other interested party by a writing executed before two competent witnesses and duly acknowledged. The waiver must be filed in the adoption proceedings before the matter is heard.

Subd. 2. Service. Such notice shall be served, within or without the state, at least 14 days before the date of the hearing, in the manner provided by law for the service of a summons in a civil action. If personal service cannot be made, the court may order service by publication. The petitioner or petitioner's attorneys shall make an affidavit setting forth the effort that was made to locate the parents, and the names and addresses of the known kin of the child. If satisfied that the parents cannot be served personally, the court shall order three weeks published notice to be given, the last publication

to be at least ten days before the time set for the hearing. Where service is made by publication the court may cause such further notice to be given as it deems just. If, in the course of the proceedings, the court shall consider that the interests of justice will be promoted it may continue the proceeding and require that such notice as it deems proper shall be served on any person. In the course of proceedings the court may enter reasonable orders for the protection of the child if the court determines that the best interests of the child require such an order.

Subd. 3. Service, guardian only. Where a child is adjudicated a dependent or neglected child and a court of competent jurisdiction has appointed a permanent guardian, or where a juvenile court has appointed a guardian after terminating parental rights, no notice of hearing need be given to the parents.

Amended by Laws 1997, c. 218, § 8; Laws 1998, c. 382, art. 2, § 3, eff. April 21, 1998; Laws 1999, c. 139, art. 4, § 2; Laws 2001, 1st Sp., c. 9, aft. 15, § 32.

259.52. Putative fathers' adoption registry

Subdivision 1. Establishment of registry; purpose; fees. (a) The commissioner of health shall establish a fathers' adoption registry for the purpose of determining the identity and location of a putative father interested in a minor child who is, or is expected to be, the subject of an adoption proceeding, in order to provide notice of the adoption proceeding to the putative father who is not otherwise entitled to notice under section 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7). The commissioner of health may establish informational material and public service announcements necessary to implement this section. Any limitation on a putative father's right to assert an interest in the child as provided in this section applies only in adoption

proceedings and only to those putative fathers not entitled to notice and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7). The commissioner of health has no independent obligation to gather or update the information to be maintained on the registry. It is the registrant's responsibility to update his personal information on the registry.

(b) The fathers' adoption registry must contain the following information:

(1) with respect to the putative father, the:

(i) name, including any other names by which the putative father may be known and that he may provide to the registry,

(ii) address at which he may be served with notice of a petition under this chapter, including any change of address;

(iii) social security number, if known;

(iv) date of birth; and

(v) if applicable, a certified copy of an order by a court of another state or territory of the United States adjudicating the putative father to be the father of this child;

(2) with respect to the mother of the child:

(i) name, including all other names known to the putative father by which the mother may be known;

(ii) if known to the putative father, her last address;

(iii) social security number, if known; and

(iv) date of birth;

(3) if known to the putative father, the name, gender, place of birth, and date of birth or anticipated date of birth of the child;

(4) the date that the commissioner of health received the putative father's registration, which is the date the registration is postmarked or the date it was delivered by means other than mail to the address on the registration form; and

(5) other information the commissioner of health determines by rule to be necessary for the orderly administration of the registry.

(c) The commissioner of health shall notify the mother of the child whenever a putative father has registered with the father's adoption registry under this section. Notice shall be sent to the name and address submitted by the putative father under paragraph (b), clause (2). If no current address for the mother is submitted by the putative father under paragraph (b), clause (2), the commissioner of health shall not notify the mother. The commissioner of health has no independent obligation to locate the mother. The notice shall be mailed within 14 days of the date that the commissioner received the putative father's adoption registration unless a search has been requested under subdivision 2. There shall be no charge to the birth mother for this notice.

(d) The commissioner of health shall set reasonable fees for the use of the registry; however, a

putative father shall not be charged a fee for registering. Revenues generated by the fee must be deposited in the state government special revenue fund and appropriated to the commissioner of health to administer the fathers' adoption registry.

Subd. 2. Requirement to search registry before adoption petition can be granted; proof of search. No petition for adoption may be granted unless the agency supervising the adoptive placement, the birth mother of the child, or, in the case of a stepparent or relative adoption, the county agency responsible for the report required under section 259.53, subdivision 1, requests that the commissioner of health search the registry to determine whether a putative father is registered in relation to a child who is or may be the subject of an adoption petition. The search required by this subdivision must be conducted no sooner than 31 days following the birth of the child. A search of the registry may be proven by the production of a certified copy of the registration form or by a certified statement of the commissioner of health that after a search no registration of a putative father in relation to a child who is or may be the subject of an adoption petition could be located. Certification that the fathers' adoption registry has been searched must be filed with the court prior to entry of any final order of adoption. In addition to the search required by this subdivision, the agency supervising the adoptive placement, the birth mother of the child, or, in the case of a stepparent or relative adoption, the county agency responsible for the report under section 259.53, subdivision 1, may request that the commissioner of health search the registry at any time.

Subd. 3. Search of registry for child support enforcement purposes. A public authority responsible for child support enforcement that is attempting to establish a child support obligation may request that the commissioner of health search the registry to determine whether a putative

father is registered in relation to a child who is or may be the subject of a child support obligation. A search of the registry may be proven by the production of a certified copy of the registration form or by a certified statement of the commissioner of health that after a search, no registration of a putative father in relation to the child could be located. No fee may be charged to the public authority for use of the registry.

Subd. 4. Classification of registry data. Data in the fathers' adoption registry, including all data provided in requesting the search of the registry, are private data on individuals, as defined in section 13.02, subdivision 2, and are nonpublic data with respect to data not on individuals, as defined in section 13.02, subdivision 9. Data in the registry may be released. to:

(1) a person who is required to search the registry under subdivision 2, if the data relate to the child who is or may be the subject of the adoption petition;

(2) the mother of the child listed on the putative father's registration form who the commissioner of health is required to notify under subdivision 1, paragraph (c);

(3) a public authority as provided in subdivision 3; or

(4) an attorney who has signed an affidavit from the commissioner of health attesting that the attorney represents the birth mother or the prospective adoptive parents.

A person who receives data under this subdivision may use the data only for purposes authorized under this section or other law.

Subd. 5. Criminal penalty for registering false information. A person who knowingly or intentionally

registers false information under this section is guilty of a misdemeanor.

Subd. 6. Who may register. Any putative father may register with the fathers' adoption registry. However, any limitation on a putative father's right to assert an interest in the child as provided in this section applies only in adoption proceedings and only to those putative fathers not entitled to notice and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7).

Subd. 7. When and how to register. A putative father may register with the department of health before the birth of the child but must register no later than 30 days after the birth of the child. Registrations must be in writing and signed by the putative father. A registration is timely if the date the registration is postmarked or the date it was delivered by means other than mail to the address specified on the registration form is not later than 30 days after the birth of the child.

Subd. 8. Failure to register. Except for a putative father who is entitled to notice and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7), a putative father who fails to timely register with the fathers' adoption registry under subdivision 7:

(1) is barred thereafter from bringing or maintaining an action to assert any interest in the child during the pending adoption proceeding concerning the child;

(2) is considered to have waived and surrendered any right to notice of any hearing in any judicial proceeding for adoption of the child, and consent of that person to the adoption of the child is not required; and

(3) is considered to have abandoned the child.

Failure to register under subdivision 7 is prima facie evidence of sufficient grounds to support termination of the putative father's parental rights under section 260C.301, subdivision 1.

A putative father who has not timely registered under subdivision 7 is considered to have timely registered if he proves by clear and convincing evidence that:

(i) it was not possible for him to register within the period of time specified in subdivision 7;

(ii) his failure to register was through no fault of his own; and

(iii) he registered within ten days after it became possible for him to file.

A lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to register.

Subd. 9. Notice and service for those on fathers' adoption registry who are not otherwise entitled to notice. Any time after conception, an interested party, including persons intending to adopt a child, a child welfare agency with whom the mother has placed or has given written notice of her intention to place a child for adoption, the mother of a child, or any attorney representing an interested party, may serve by certified mail a notice to registe'ed putative father, an intent to claim parental rights form, a denial of paternity form, and a consent to adoption form pursuant to subdivision 11. These documents may be served on a putative father in the same manner as a summons is served in other civil proceedings, or, in lieu of personal service, service may be made as follows:

(a) The interested party or that party's attorney shall mail to the putative father, at the address provided to the registry, the copy of the notice to registered putative father, the intent to claim parental rights form, the denial of paternity form, and the consent to adoption form by certified mail, return receipt requested, and shall provide notice of the jurisdiction in which the adoption petition will be filed. The receipt for certified mail must state the name and address of the addressee and the date of mailing and must be attached to the original notice.

(b) The return receipt, when filed with the court, must be attached to the original notice to registered putative father, the intent to claim parental rights form, the denial of paternity form, and the consent to adoption form and constitutes proof of service.

(c) The court administrator shall note the fact of service in a permanent record.

Subd. 10. Response to notice to registered putative father; limitation of rights for failure to respond and upon filing of denial of paternity. Within 30 days of receipt of the notice to registered putative father, the intent to claim parental rights form, the denial of paternity form, and the consent to adoption form, the putative father must file a completed intent to claim parental rights form with the court administrator in the county in which the adoption petition will be filed as provided by the petitioner, stating that he intends to initiate a paternity action within 30 days of receipt of the notice to registered putative father in order to preserve the right to maintain an interest in the child and receive notice during the pending adoption proceeding. Failure to initiate a paternity action within 30 days of receipt of the notice to registered putative father does not act as a bar to receiving notice under section 259.49. If good cause is shown, the putative father

must be allowed more time to initiate the paternity action. A putative father who files a completed denial of paternity form and consent to adoption form or who fails to timely file an intent to claim parental rights form with the court:

(1) is barred from later bringing or maintaining an action to assert any interest in the child during the pending adoption proceeding concerning the child;

(2) is considered to have waived and surrendered a right to notice of a hearing in any judicial proceeding for adoption of the child, and consent of that person to the adoption of the child is not required; and

(3) is considered to have abandoned the child.

Failure to register is prima facie evidence of sufficient grounds to support termination of the putative father's parental rights.

Subd. 11. Forms. The office of the state court administrator shall develop the following forms:

(1) notice to registered putative father;

(2) intent to claim parental rights;

(3) denial of paternity;

(4) consent to adoption; and

(5) notice to registered putative father of the county in which the adoption petition will be filed.

Subd. 12. Right to counsel at public expense. Upon proof of indigency, a putative father who has registered with the fathers' adoption registry, has received a notice to

registered putative father, and has timely filed an intent to claim paternal rights form with the court administrator, must have counsel appointed at public expense.

Subd. 13.Applicability of Indian Child Welfare Act. In an action involving an American Indian child, sections 260.751 to 260.835, and the Indian Child welfare Act, United States Code, title 25, sections 1901 to 1923, control to the extent that the provisions of this section are inconsistent with those laws. The public acts, records, and judicial proceedings of any Indian tribe that provide an acknowledgment of paternity or that establish paternity pursuant to tribal law or custom shall be given full faith and credit as provided in United States Code, title 25, section 1911(d). Nothing in this section defeats the right of an Indian father who has acknowledged or established his paternity pursuant to tribal law or custom to commence a paternity proceeding, except that no father may file a paternity proceeding after the entry of a final decree of adoption.

Subd. 14. Fees for fathers' adoption registry. The district court administrator in every judicial district shall, in addition to any other filing fees, assess a $75 adoption filing fee surcharge on each adoption petition filed in the district court for the purpose of implementing and maintaining the fathers' adoption registry. The court administrator shall forward fees collected under this subdivision to the commissioner of finance for deposit into the state government special revenue fund to be appropriated to the commissioner of health to administer the fathers' adoption registry established under this section.

Subd. 15. International adoptions. This section does not apply to international adoptions.

Laws 1997, c. 218, § 9. Amended by Laws 1998, c. 354, §§ I to 7, eff. April 4, 1998; Laws 1998, c. 382, art. 2, §§ 4 to 14,

eff. April 21, 1998; Laws 1999, c. 122, §§ 1 to 6; Laws 1999, c. 139, art. 4, § 2.